

SHB 3178 - S COMM AMD
By Committee on Transportation

ADOPTED 03/02/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 47.64.011 and 1983 c 15 s 2 are each amended to read
4 as follows:

5 As used in this chapter, unless the context otherwise requires, the
6 definitions in this section shall apply.

7 ~~(1) ("Arbitration" means the procedure whereby the parties
8 involved in an impasse submit their differences to a third party for a
9 final and binding decision or as provided in this chapter.~~

10 ~~(2) "Arbitrator" means either a single arbitrator or a panel of
11 three arbitrators as provided in RCW 47.64.240.~~

12 ~~(3))~~ "Collective bargaining representative" means the persons
13 designated by the ~~((secretary of transportation))~~ governor and employee
14 organizations to be the exclusive representatives during collective
15 bargaining negotiations.

16 ~~((4))~~ (2) "Commission" means the marine employees' commission
17 created in RCW 47.64.280.

18 (3) "Department of transportation" means the department as defined
19 in RCW 47.01.021.

20 (4) "Employer" means the state of Washington.

21 (5) "Ferry employee" means any employee of the marine
22 transportation division of the department of transportation who is a
23 member of a collective bargaining unit represented by a ferry employee
24 organization and does not include an exempt employee pursuant to RCW
25 41.06.079.

26 (6) "Ferry employee organization" means any labor organization
27 recognized to represent a collective bargaining unit of ferry
28 employees.

29 ~~(7) ("Ferry system management" means those management personnel of
30 the marine transportation division of the department of transportation~~

1 who have been vested with the day to day management responsibilities of
2 the Washington state ferry system by the transportation commission and
3 who are not members of a collective bargaining unit represented by a
4 ferry employee organization.

5 ~~(8))~~ "Lockout" means the refusal of (~~ferry system management~~)
6 the employer to furnish work to ferry employees in an effort to get
7 ferry employee organizations to make concessions during collective
8 bargaining, grievance, or other labor relation negotiations.
9 Curtailment of employment of ferry employees due to lack of work
10 resulting from a strike or work stoppage(~~, as defined in subsection~~
11 ~~(11) of this section,~~) shall not be considered a lockout.

12 ~~((9) "Marine employees' commission" means the commission created~~
13 ~~in RCW 47.64.280.~~

14 ~~(10))~~ (8) "Office of financial management" means the office as
15 created in RCW 43.41.050.

16 ~~((11))~~ (9) "Strike or work stoppage" means a ferry employee's
17 refusal, in concerted action with others, to report to duty, or his or
18 her willful absence from his or her position, or his or her stoppage or
19 slowdown of work, or his or her abstinence in whole or in part from the
20 full, faithful, and proper performance of the duties of employment, for
21 the purpose of inducing, influencing, or coercing a change in
22 conditions, compensation, rights, privileges, or obligations of his,
23 her, or any other ferry employee's employment. A refusal, in good
24 faith, to work under conditions which pose an endangerment to the
25 health and safety of ferry employees or the public, as determined by
26 the master of the vessel, shall not be considered a strike for the
27 purposes of this chapter.

28 ~~((12) "Transportation commission" means the commission as defined~~
29 ~~in RCW 47.01.021.)~~

30 NEW SECTION. Sec. 2. A new section is added to chapter 47.64 RCW
31 to read as follows:

32 (1) For the purpose of negotiating collective bargaining agreements
33 under this chapter, the employer shall be represented by the governor
34 or governor's designee.

35 (2) Two or more ferry employee organizations may, upon agreement of
36 the parties, negotiate, as a coalition with the employer representative
37 as designated in subsection (1) of this section, a multiunion

1 collective bargaining agreement on behalf of all the employees in ferry
2 employee organization bargaining units that the exclusive bargaining
3 representatives represent. The coalition shall bargain for a
4 multiunion collective bargaining agreement covering all of the
5 employees represented by the coalition. The governor's designee and
6 the exclusive bargaining representative or representatives are
7 authorized to enter into supplemental bargaining of bargaining unit-
8 specific issues for inclusion in or as an addendum to the multiunion
9 collective bargaining agreement, subject to the parties' agreement
10 regarding the issues and procedures for supplemental bargaining.
11 Nothing in this section impairs the right of each ferry employee
12 organization to negotiate a collective bargaining agreement exclusive
13 to the bargaining unit it represents.

14 **Sec. 3.** RCW 47.64.120 and 1997 c 436 s 1 are each amended to read
15 as follows:

16 (1) (~~Ferry system management~~) The employer and ferry system
17 employee organizations, through their collective bargaining
18 representatives, shall meet at reasonable times, to negotiate in good
19 faith with respect to wages, hours, working conditions, insurance, and
20 health care benefits as limited by RCW 47.64.270, and other matters
21 mutually agreed upon. Employer funded retirement benefits shall be
22 provided under the public employees retirement system under chapter
23 41.40 RCW and shall not be included in the scope of collective
24 bargaining.

25 (2) Upon ratification of bargaining agreements, ferry employees are
26 entitled to an amount equivalent to the interest earned on retroactive
27 compensation increases. For purposes of this section, the interest
28 earned on retroactive compensation increases is the same monthly rate
29 of interest that was earned on the amount of the compensation increases
30 while held in the state treasury. The interest will be computed for
31 each employee until the date the retroactive compensation is paid, and
32 must be allocated in accordance with appropriation authority. The
33 interest earned on retroactive compensation is not considered part of
34 the ongoing compensation obligation of the state and is not
35 compensation earnable for the purposes of chapter 41.40 RCW.
36 Negotiations shall also include grievance procedures for resolving any

1 questions arising under the agreement, which shall be embodied in a
2 written agreement and signed by the parties.

3 (3) Except as otherwise provided in this chapter, if a conflict
4 exists between an executive order, administrative rule, or agency
5 policy relating to wages, hours, and terms and conditions of employment
6 and a collective bargaining agreement negotiated under this chapter,
7 the collective bargaining agreement shall prevail. A provision of a
8 collective bargaining agreement that conflicts with the terms of a
9 statute is invalid and unenforceable.

10 **Sec. 4.** RCW 47.64.130 and 1983 c 15 s 4 are each amended to read
11 as follows:

12 (1) It is an unfair labor practice for (~~ferry system management~~)
13 the employer or its representatives:

14 (a) To interfere with, restrain, or coerce employees in the
15 exercise of the rights guaranteed by this chapter;

16 (b) To dominate or interfere with the formation or administration
17 of any employee organization or contribute financial or other support
18 to it(~~PROVIDED, That~~). However, subject to rules made by the
19 commission pursuant to RCW 47.64.280, an employer shall not be
20 prohibited from permitting employees to confer with it or its
21 representatives or agents during working hours without loss of time or
22 pay;

23 (c) To encourage or discourage membership in any employee
24 organization by discrimination in regard to hiring, tenure of
25 employment, or any term or condition of employment, but nothing
26 contained in this subsection prevents an employer from requiring, as a
27 condition of continued employment, payment of periodic dues and fees
28 uniformly required to an exclusive bargaining representative pursuant
29 to RCW 47.64.160(~~PROVIDED, That~~). However, nothing prohibits
30 (~~ferry system management~~) the employer from agreeing to obtain
31 employees by referral from a lawful hiring hall operated by or
32 participated in by a labor organization;

33 (d) To discharge or otherwise discriminate against an employee
34 because he has filed charges or given testimony under this chapter;

35 (e) To refuse to bargain collectively with the representatives of
36 its employees.

37 (2) It is an unfair labor practice for an employee organization:

1 (a) To restrain or coerce (i) employees in the exercise of the
2 rights guaranteed by this chapter(~~(: PROVIDED, That this paragraph)~~).
3 However, this subsection does not impair the right of an employee
4 organization to prescribe its own rules with respect to the acquisition
5 or retention of membership therein, or (ii) an employer in the
6 selection of his representatives for the purposes of collective
7 bargaining or the adjustment of grievances;

8 (b) To cause or attempt to cause an employer to discriminate
9 against an employee in violation of subsection (1)(c) of this section;

10 (c) To refuse to bargain collectively with an employer(~~(, when it~~
11 ~~is the representative of its employees subject to RCW 47.64.170)~~).

12 (3) The expression of any view, argument, or opinion, or the
13 dissemination thereof to the public, whether in written, printed,
14 graphic, or visual form, shall not constitute or be evidence of an
15 unfair labor practice under any of the provisions of this chapter, if
16 the expression contains no threat of reprisal or force or promise of
17 benefit.

18 **Sec. 5.** RCW 47.64.140 and 1989 c 373 s 25 are each amended to read
19 as follows:

20 (1) It is unlawful for any ferry system employee or any employee
21 organization, directly or indirectly, to induce, instigate, encourage,
22 authorize, ratify, or participate in a strike or work stoppage against
23 the ferry system.

24 (2) It is unlawful for (~~(ferry system management)~~) the employer to
25 authorize, consent to, or condone a strike or work stoppage; or to
26 conduct a lockout; or to pay or agree to pay any ferry system employee
27 for any day in which the employee participates in a strike or work
28 stoppage; or to pay or agree to pay any increase in compensation or
29 benefits to any ferry system employee in response to or as a result of
30 any strike or work stoppage or any act that violates subsection (1) of
31 this section. It is unlawful for any official, director, or
32 representative of the ferry system to authorize, ratify, or participate
33 in any violation of this subsection. Nothing in this subsection
34 prevents new or renewed bargaining and agreement within the scope of
35 negotiations as defined by this chapter, at any time. No collective
36 bargaining agreement provision regarding suspension or modification of

1 any court-ordered penalty provided in this section is binding on the
2 courts.

3 (3) In the event of any violation or imminently threatened
4 violation of subsection (1) or (2) of this section, any citizen
5 domiciled within the jurisdictional boundaries of the state may
6 petition the superior court for Thurston county for an injunction
7 restraining the violation or imminently threatened violation. Rules of
8 civil procedure regarding injunctions apply to the action. However,
9 the court shall grant a temporary injunction if it appears to the court
10 that a violation has occurred or is imminently threatened; the
11 plaintiff need not show that the violation or threatened violation
12 would greatly or irreparably injure him or her; and no bond may be
13 required of the plaintiff unless the court determines that a bond is
14 necessary in the public interest. Failure to comply with any temporary
15 or permanent injunction granted under this section is a contempt of
16 court as provided in chapter 7.21 RCW. The court may impose a penalty
17 of up to ten thousand dollars for an employee organization or the ferry
18 system, for each day during which the failure to comply continues. The
19 sanctions for a ferry employee found to be in contempt shall be as
20 provided in chapter 7.21 RCW. An individual or an employee
21 organization which makes an active good faith effort to comply fully
22 with the injunction shall not be deemed to be in contempt.

23 (4) The right of ferry system employees to engage in strike or work
24 slowdown or stoppage is not granted and nothing in this chapter may be
25 construed to grant such a right.

26 (5) Each of the remedies and penalties provided by this section is
27 separate and several, and is in addition to any other legal or
28 equitable remedy or penalty.

29 (6) In addition to the remedies and penalties provided by this
30 section the successful litigant is entitled to recover reasonable
31 attorney fees and costs incurred in the litigation.

32 (7) Notwithstanding the provisions of chapter 88.04 RCW and chapter
33 88.08 RCW, the department of transportation shall (~~promulgate~~) adopt
34 rules (~~and regulations~~) allowing vessels, as defined in RCW
35 (~~88.04.300~~) 88.04.015, as well as other watercraft, to engage in
36 emergency passenger service on the waters of Puget Sound in the event
37 ferry employees engage in a work slowdown or stoppage. Such emergency
38 rules (~~and regulations~~) shall allow emergency passenger service on

1 the waters of Puget Sound within seventy-two hours following a work
2 slowdown or stoppage. Such rules ~~((and regulations))~~ that are
3 ~~((promulgated))~~ adopted shall give due consideration to the needs and
4 the health, safety, and welfare of the people of the state of
5 Washington.

6 **Sec. 6.** RCW 47.64.170 and 1983 c 15 s 8 are each amended to read
7 as follows:

8 (1) Any ferry employee organization certified as the bargaining
9 representative shall be the exclusive representative of all ferry
10 employees in the bargaining unit and shall represent all such employees
11 fairly.

12 (2) A ferry employee organization or organizations and the
13 ~~((secretary of transportation))~~ governor may each designate any
14 individual as its representative to engage in collective bargaining
15 negotiations.

16 (3) Negotiating sessions, including strategy meetings of ~~((ferry
17 system management))~~ the employer or employee organizations, mediation,
18 and the deliberative process of arbitrators are exempt from the
19 provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may
20 be open to the public by mutual consent of the parties. ~~((Any meeting
21 of the transportation commission, during which a collective bargaining
22 agreement is subject to ratification, shall be open to the public.))~~

23 (4) Terms of any collective bargaining agreement may be enforced by
24 civil action in Thurston county superior court upon the initiative of
25 either party.

26 (5) Ferry system employees or any employee organization shall not
27 negotiate or attempt to negotiate directly with ~~((a member of the
28 transportation commission if the commission has))~~ anyone other than the
29 person who has been appointed or authorized a bargaining representative
30 for the purpose of bargaining with the ferry employees or their
31 representative ~~((, unless the member of the commission is the designated
32 bargaining representative of the ferry system))~~.

33 (6)(a) The negotiation of a proposed collective bargaining
34 agreement by representatives of ~~((ferry system management))~~ the
35 employer and a ferry employee organization shall commence ~~((in each
36 odd numbered year immediately following adoption by the legislature and
37 approval by the governor of the biennial budget))~~ on or about September

1 1st of every odd-numbered year. However, negotiations for the 2007-
2 2009 biennial agreements may commence at any time after the effective
3 date of this section. Negotiations for agreements pertaining to the
4 2009-2011 biennium and all subsequent negotiations must conclude on or
5 about April 1st of the year following the year in which the
6 negotiations commence. If negotiations are not concluded by April 1st,
7 the parties shall be deemed to be at impasse and shall proceed to
8 mediation under RCW 47.64.230 and sections 12 through 14 of this act.

9 (b) For negotiations covering the 2009-2011 biennium and subsequent
10 biennia, the time periods specified in this section, and in RCW
11 47.64.210 and sections 12 through 14 of this act, must ensure
12 conclusion of all agreements on or before September 1st of the even-
13 numbered year next preceding the biennial budget period during which
14 the agreement should take effect. These time periods may only be
15 altered by mutual agreement of the parties in writing. Any such
16 agreement and any impasse procedures agreed to by the parties under RCW
17 47.64.200 must include an agreement regarding the new time periods that
18 will allow final resolution by negotiations or arbitration by September
19 1st of each even-numbered year. Negotiations for the 2007-2009
20 biennium must be concluded on or before October 1, 2006.

21 (7) Until a new collective bargaining agreement is ((negotiated, or
22 until an award is made by the arbitrator)) in effect, the terms and
23 conditions of the previous collective bargaining agreement shall remain
24 in force. ((The wage and benefit provisions of any collective
25 bargaining agreement, or arbitrator's award in lieu thereof, that is
26 concluded after July 1st of an odd-numbered year shall be retroactive
27 to July 1st.)) It is the intent of this section that the collective
28 bargaining agreement or arbitrator's award shall commence on July 1st
29 of each odd-numbered year and shall terminate on June 30th of the next
30 odd-numbered year to coincide with the ensuing biennial budget year, as
31 defined by RCW 43.88.020(7), to the extent practical. It is further
32 the intent of this section that all collective bargaining agreements be
33 concluded by September 1st of the even-numbered year before the
34 commencement of the biennial budget year during which the agreements
35 are to be in effect.

36 (8) ((Any ferry union contract terminating before July 1, 1983,
37 shall, with the agreement of the parties, remain in effect until a
38 contract can be concluded under RCW 47.64.006, 47.64.011, and 47.64.120

1 through 47.64.280. The contract may be retroactive to the expiration
2 date of the prior contract, and the cost to the department of three
3 months retroactive compensation and benefits for this 1983 contract
4 negotiation only shall not be included in calculating the limitation
5 imposed by RCW 47.64.180. If the parties cannot agree to contract
6 extension, any increase agreed to for the three month period shall be
7 included in calculating the limit imposed by RCW 47.64.180.

8 (9) Any ferry union contract which would terminate after July 1,
9 1983, may, by agreement of the parties, be terminated as of July 1,
10 1983, and a new contract concluded pursuant to RCW 47.64.006,
11 47.64.011, and 47.64.120 through 47.64.280. Any contract terminating
12 after July 1, 1983, is subject to this chapter only upon its expiration
13 and shall not be renewed for a period beyond July 1, 1985.)

14 (a) The governor shall submit a request either for funds necessary to implement
15 the collective bargaining agreements including, but not limited to, the
16 compensation and fringe benefit provisions or for legislation necessary
17 to implement the agreement, or both. Requests for funds necessary to
18 implement the collective bargaining agreements shall not be submitted
19 to the legislature by the governor unless such requests:

20 (i) Have been submitted to the director of the office of financial
21 management by October 1st before the legislative session at which the
22 requests are to be considered; and

23 (ii) Have been certified by the director of the office of financial
24 management as being feasible financially for the state.

25 (b) The governor shall submit a request either for funds necessary
26 to implement the arbitration awards or for legislation necessary to
27 implement the arbitration awards, or both. Requests for funds
28 necessary to implement the arbitration awards shall not be submitted to
29 the legislature by the governor unless such requests have been
30 submitted to the director of the office of financial management by
31 October 1st before the legislative session at which the requests are to
32 be considered.

33 (c) The legislature shall approve or reject the submission of the
34 request for funds necessary to implement the collective bargaining
35 agreements or arbitration awards as a whole for each agreement or
36 award. The legislature shall not consider a request for funds to
37 implement a collective bargaining agreement or arbitration award unless
38 the request is transmitted to the legislature as part of the governor's

1 budget document submitted under RCW 43.88.030 and 43.88.060. If the
2 legislature rejects or fails to act on the submission, either party may
3 reopen all or part of the agreement and award or the exclusive
4 bargaining representative may seek to implement the procedures provided
5 for in RCW 47.64.210 and section 12 of this act.

6 (9) If, after the compensation and fringe benefit provisions of an
7 agreement are approved by the legislature, a significant revenue
8 shortfall occurs resulting in reduced appropriations, as declared by
9 proclamation of the governor or by resolution of the legislature, both
10 parties shall immediately enter into collective bargaining for a
11 mutually agreed upon modification of the agreement.

12 **Sec. 7.** RCW 47.64.200 and 1983 c 15 s 11 are each amended to read
13 as follows:

14 As the first step in the performance of their duty to bargain,
15 (~~ferry system management~~) the employer and the employee organization
16 shall endeavor to agree upon impasse procedures. (~~The agreement shall~~
17 ~~provide for implementation of these impasse procedures not later than~~
18 ~~July 1st in each odd numbered year following enactment of the biennial~~
19 ~~budget.~~) Unless otherwise agreed to by the employee organization and
20 the employer in their impasse procedures, the arbitrator or panel is
21 limited to selecting the most reasonable offer, in its judgment, of the
22 final offers on each impasse item submitted by the parties. The
23 employee organization and the employer may mutually agree to the
24 impasse procedure under which the arbitrator or panel may issue a
25 decision it deems just and appropriate with respect to each impasse
26 item. If the parties fail to agree upon impasse procedures under this
27 section, the impasse procedures provided in RCW 47.64.210 (~~through~~)
28 and 47.64.230 and sections 12 through 14 of this act apply. It is
29 unlawful for either party to refuse to participate in the impasse
30 procedures provided in RCW 47.64.210 (~~through~~) and 47.64.230 and
31 sections 12 through 14 of this act.

32 **Sec. 8.** RCW 47.64.210 and 1983 c 15 s 12 are each amended to read
33 as follows:

34 In the absence of an impasse agreement between the parties or the
35 failure of either party to utilize its procedures by (~~August~~) April
36 1st in (~~each odd numbered year, the marine employees' commission~~

1 ~~shall, upon the request of either party,))~~ the even-numbered year
2 preceding the biennium, either party may request the commission to
3 appoint an impartial and disinterested person to act as mediator
4 ~~((pursuant to RCW 47.64.280))~~. It is the function of the mediator to
5 bring the parties together to effectuate a settlement of the dispute,
6 but the mediator shall not compel the parties to agree.

7 **Sec. 9.** RCW 47.64.220 and 1999 c 256 s 1 are each amended to read
8 as follows:

9 (1) Prior to collective bargaining and for purposes of collective
10 bargaining and arbitration, the ~~((marine employees'))~~ commission shall
11 conduct a salary survey. The results of the survey shall be published
12 in a report which shall be a public document comparing wages, hours,
13 employee benefits, and conditions of employment of involved ferry
14 employees with those of public and private sector employees in states
15 along the west coast of the United States, including Alaska, and in
16 British Columbia doing directly comparable but not necessarily
17 identical work, giving consideration to factors peculiar to the area
18 and the classifications involved. Such survey report shall be for the
19 purpose of disclosing generally prevailing levels of compensation,
20 benefits, and conditions of employment. It shall be used to guide
21 generally but not to define or limit collective bargaining between the
22 parties. ~~((The commission shall make such other findings of fact as~~
23 ~~the parties may request during bargaining or impasse.))~~

24 (2) ~~((Except as provided in subsection (3) of this section,))~~
25 Salary and employee benefit information collected from private
26 employers that identifies a specific employer with the salary and
27 employee benefit rates which that employer pays to its employees is not
28 subject to public disclosure under chapter 42.17 RCW.

29 ~~((3) A person or entity, having reason to believe that the salary~~
30 ~~survey results are inaccurate, may submit a petition to the state~~
31 ~~auditor requesting an audit of the data upon which the salary survey~~
32 ~~results are based. The state auditor shall review and analyze all data~~
33 ~~collected for the salary survey, including proprietary information, but~~
34 ~~is prohibited from disclosing the salary survey data to any other~~
35 ~~person or entity, except by court order.))~~

1 **Sec. 10.** RCW 47.64.220 and 2005 c 274 s 308 are each amended to
2 read as follows:

3 (1) Prior to collective bargaining and for purposes of collective
4 bargaining and arbitration, the (~~marine employees'~~) commission shall
5 conduct a salary survey. The results of the survey shall be published
6 in a report which shall be a public document comparing wages, hours,
7 employee benefits, and conditions of employment of involved ferry
8 employees with those of public and private sector employees in states
9 along the west coast of the United States, including Alaska, and in
10 British Columbia doing directly comparable but not necessarily
11 identical work, giving consideration to factors peculiar to the area
12 and the classifications involved. Such survey report shall be for the
13 purpose of disclosing generally prevailing levels of compensation,
14 benefits, and conditions of employment. It shall be used to guide
15 generally but not to define or limit collective bargaining between the
16 parties. (~~The commission shall make such other findings of fact as~~
17 ~~the parties may request during bargaining or impasse.~~)

18 (2) (~~Except as provided in subsection (3) of this section,~~)
19 Salary and employee benefit information collected from private
20 employers that identifies a specific employer with the salary and
21 employee benefit rates which that employer pays to its employees is not
22 subject to public disclosure under chapter 42.56 RCW.

23 (~~(3) A person or entity, having reason to believe that the salary~~
24 ~~survey results are inaccurate, may submit a petition to the state~~
25 ~~auditor requesting an audit of the data upon which the salary survey~~
26 ~~results are based. The state auditor shall review and analyze all data~~
27 ~~collected for the salary survey, including proprietary information, but~~
28 ~~is prohibited from disclosing the salary survey data to any other~~
29 ~~person or entity, except by court order.~~)

30 **Sec. 11.** RCW 47.64.230 and 1983 c 15 s 14 are each amended to read
31 as follows:

32 By mutual agreement, the parties may waive mediation (~~and fact-~~
33 ~~finding, as provided for in RCW 47.64.210 and 47.64.220,~~) and proceed
34 with binding arbitration as provided for in (~~RCW 47.64.240~~) the
35 impasse procedures agreed to under RCW 47.64.200 or in sections 12
36 through 14 of this act, as applicable. The waiver shall be in writing
37 and be signed by the representatives of the parties.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 47.64 RCW
2 to read as follows:

3 (1) If an agreement has not been reached following a reasonable
4 period of negotiations and, when applicable, mediation, but in either
5 event by April 15th, upon the recommendation of the assigned mediator
6 that the parties remain at impasse, all impasse items shall be
7 submitted to arbitration under this section. The issues for
8 arbitration shall be limited to the issues certified by the commission.

9 (2) The parties may agree to submit the dispute to a single
10 arbitrator, whose authority and duties shall be the same as those of an
11 arbitration panel. If the parties cannot agree on the arbitrator
12 within five working days, the selection shall be made under subsection
13 (3) of this section. The full costs of arbitration under this section
14 shall be shared equally by the parties to the dispute.

15 (3) Within seven days following the issuance of the determination
16 of the commission, each party shall name one person to serve as its
17 arbitrator on the arbitration panel. The two members so appointed
18 shall meet within seven days following the appointment of the later
19 appointed member to attempt to choose a third member to act as the
20 neutral chair of the arbitration panel. Upon the failure of the
21 arbitrators to select a neutral chair within seven days, either party
22 may apply to the federal mediation and conciliation service, or the
23 American arbitration association to provide a list of five qualified
24 arbitrators from which the neutral chair shall be chosen. Each party
25 shall pay the fees and expenses of its arbitrator, and the fees and
26 expenses of the neutral chair shall be shared equally between the
27 parties.

28 (4) In consultation with the parties, the arbitrator or arbitration
29 panel shall promptly establish a date, time, and place for a hearing
30 and shall provide reasonable notice thereof to the parties to the
31 dispute. The parties shall exchange final positions in writing, with
32 copies to the arbitrator or arbitration panel, with respect to every
33 issue to be arbitrated, on a date mutually agreed upon, but in no event
34 later than ten working days before the date set for hearing. A
35 hearing, which shall be informal, shall be held, and each party shall
36 have the opportunity to present evidence and make argument. No member
37 of the arbitration panel may present the case for a party to the
38 proceedings. The rules of evidence prevailing in judicial proceedings

1 may be considered, but are not binding, and any oral testimony or
2 documentary evidence or other data deemed relevant by the chair of the
3 arbitration panel may be received in evidence. A recording of the
4 proceedings shall be taken. The arbitration panel has the power to
5 administer oaths, require the attendance of witnesses, and require the
6 production of such books, papers, contracts, agreements, and documents
7 as may be deemed by the panel to be material to a just determination of
8 the issues in dispute. If any person refuses to obey a subpoena issued
9 by the arbitration panel, or refuses to be sworn or to make an
10 affirmation to testify, or any witness, party, or attorney for a party
11 is guilty of any contempt while in attendance at any hearing held
12 hereunder, the arbitration panel may invoke the jurisdiction of the
13 superior court in the county where the labor dispute exists, and the
14 court has jurisdiction to issue an appropriate order. Any failure to
15 obey the order may be punished by the court as a contempt thereof.

16 (5) The neutral chair shall consult with the other members of the
17 arbitration panel, if a panel has been created. Within thirty days
18 following the conclusion of the hearing, the neutral chair shall make
19 written findings of fact and a written determination of the issues in
20 dispute, based on the evidence presented. A copy thereof shall be
21 served on each of the other members of the arbitration panel, and on
22 each of the parties to the dispute. That determination is final and
23 binding upon both parties, subject to review by the superior court upon
24 the application of either party solely upon the question of whether the
25 decision of the panel was arbitrary or capricious.

26 NEW SECTION. **Sec. 13.** A new section is added to chapter 47.64 RCW
27 to read as follows:

28 An interest arbitration proceeding under section 12 of this act
29 exercises a state function and is, for the purposes of this chapter,
30 functioning as a state agency. Chapter 34.05 RCW does not apply to an
31 interest arbitration proceeding under this chapter.

32 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.64 RCW
33 to read as follows:

34 (1) The mediator, arbitrator, or arbitration panel may consider
35 only matters that are subject to bargaining under this chapter.

1 (2) The decision of an arbitrator or arbitration panel is not
2 binding on the legislature and, if the legislature does not approve the
3 funds necessary to implement provisions pertaining to compensation and
4 fringe benefit provisions of an arbitrated collective bargaining
5 agreement, is not binding on the state, the department of
6 transportation, or the ferry employee organization.

7 (3) In making its determination, the arbitrator or arbitration
8 panel shall be mindful of the legislative purpose under RCW 47.64.005
9 and 47.64.006 and, as additional standards or guidelines to aid it in
10 reaching a decision, shall take into consideration the following
11 factors:

12 (a) Past collective bargaining contracts between the parties
13 including the bargaining that led up to the contracts;

14 (b) The constitutional and statutory authority of the employer;

15 (c) Stipulations of the parties;

16 (d) The results of the salary survey as required in RCW 47.64.220;

17 (e) Comparison of wages, hours, employee benefits, and conditions
18 of employment of the involved ferry employees with those of public and
19 private sector employees in states along the west coast of the United
20 States, including Alaska, and in British Columbia doing directly
21 comparable but not necessarily identical work, giving consideration to
22 factors peculiar to the area and the classifications involved;

23 (f) Changes in any of the foregoing circumstances during the
24 pendency of the proceedings;

25 (g) The limitations on ferry toll increases and operating subsidies
26 as may be imposed by the legislature; and

27 (h) Other factors that are normally or traditionally taken into
28 consideration in the determination of matters that are subject to
29 bargaining under this chapter.

30 NEW SECTION. **Sec. 15.** A new section is added to chapter 47.64 RCW
31 to read as follows:

32 Collective bargaining under this act may not be for the purposes of
33 making a collective bargaining agreement take effect before July 1,
34 2007. No party may engage in collective bargaining under this act to
35 amend a collective bargaining agreement in effect on the effective date
36 of this section. A collective bargaining agreement or amendment

1 thereto entered into under this act shall not be effective before July
2 1, 2007, and may not have any retroactive effect.

3 NEW SECTION. **Sec. 16.** (1) This act applies prospectively only and
4 not retroactively. It applies to collective bargaining agreements, the
5 negotiations of collective bargaining agreements, mediations,
6 arbitrations, and other actions under this act that arise or are
7 commenced on or after the effective date of this section.

8 (2) This act does not apply to collective bargaining agreements,
9 either in effect or for which the negotiations have begun, or
10 mediations and arbitrations that arose or commenced under this chapter
11 before the effective date of this section. Such collective bargaining
12 agreements and related proceedings must be administered in accordance
13 with the authorities, rules, and procedures that were established under
14 this chapter as it existed before the effective date of this section.
15 The repealers in section 19 of this act do not affect any existing
16 right acquired, or liability or obligation incurred, under the statutes
17 repealed or under any rule or order adopted under those statutes, nor
18 do they affect any proceeding instituted under them.

19 **Sec. 17.** RCW 47.64.270 and 1995 1st sp.s. c 6 s 6 are each amended
20 to read as follows:

21 Absent a collective bargaining agreement to the contrary, the
22 department of transportation shall provide contributions to insurance
23 and health care plans for ferry system employees and dependents, as
24 determined by the state health care authority, under chapter 41.05 RCW;
25 and the (~~ferry system management~~) employer and employee organizations
26 may collectively bargain for other insurance and health care plans, and
27 employer contributions may exceed that of other state agencies as
28 provided in RCW 41.05.050(~~(, subject to RCW 47.64.180)~~). To the extent
29 that ferry employees by bargaining unit have absorbed the required
30 offset of wage increases by the amount that the employer's contribution
31 for employees' and dependents' insurance and health care plans exceeds
32 that of other state general government employees in the 1985-87 fiscal
33 biennium, employees shall not be required to absorb a further offset
34 except to the extent the differential between employer contributions
35 for those employees and all other state general government employees
36 increases during any subsequent fiscal biennium. If such differential

1 increases in the 1987-89 fiscal biennium or the 1985-87 offset by
2 bargaining unit is insufficient to meet the required deduction, the
3 amount available for compensation shall be reduced by bargaining unit
4 by the amount of such increase or the 1985-87 shortage in the required
5 offset. Compensation shall include all wages and employee benefits.

6 **Sec. 18.** RCW 47.64.280 and 1984 c 287 s 95 are each amended to
7 read as follows:

8 (1) There is created the marine employees' commission. The
9 governor shall appoint the commission with the consent of the senate.
10 The commission shall consist of three members: One member to be
11 appointed from labor, one member from industry, and one member from the
12 public who has significant knowledge of maritime affairs. The public
13 member shall be (~~chairman~~) chair of the commission. One of the
14 original members shall be appointed for a term of three years, one for
15 a term of four years, and one for a term of five years. Their
16 successors shall be appointed for terms of five years each, except that
17 any person chosen to fill a vacancy shall be appointed only for the
18 unexpired term of the member whom he or she succeeds. Commission
19 members are eligible for reappointment. Any member of the commission
20 may be removed by the governor, upon notice and hearing, for neglect of
21 duty or malfeasance in office, but for no other cause. Commission
22 members are not eligible for state retirement under chapter 41.40 RCW
23 by virtue of their service on the commission. Members of the
24 commission shall be compensated in accordance with RCW 43.03.250 and
25 shall receive reimbursement for official travel and other expenses at
26 the same rate and on the same terms as provided for the transportation
27 commission by RCW 47.01.061. The payments shall be made from the Puget
28 Sound ferry operations account.

29 (2) The (~~marine employees'~~) commission shall: (a) Adjust all
30 complaints, grievances, and disputes between labor and management
31 arising out of the operation of the ferry system as provided in RCW
32 47.64.150; (b) provide for impasse mediation as required in RCW
33 47.64.210; (c) (~~conduct fact finding and~~) provide salary surveys as
34 required in RCW 47.64.220; and (d) (~~provide for the selection of an~~
35 ~~impartial arbitrator as~~) perform those duties required in (~~RCW~~
36 ~~47.64.240(5)~~) section 12 of this act.

1 (3)(a) In adjudicating all complaints, grievances, and disputes,
2 the party claiming labor disputes shall, in writing, notify the
3 (~~marine employees~~) commission, which shall make careful inquiry into
4 the cause thereof and issue an order advising the ferry employee, or
5 the ferry employee organization representing him or her, and the
6 department of transportation, as to the decision of the commission.

7 (b) The parties are entitled to offer evidence relating to disputes
8 at all hearings conducted by the commission. The orders and awards of
9 the commission are final and binding upon any ferry employee or
10 employees or their representative affected thereby and upon the
11 department.

12 (c) The commission shall adopt rules of procedure under chapter
13 34.05 RCW.

14 (d) The commission has the authority to subpoena any ferry employee
15 or employees, or their representatives, and any member or
16 representative of the department, and any witnesses. The commission
17 may require attendance of witnesses and the production of all pertinent
18 records at any hearings held by the commission. The subpoenas of the
19 commission are enforceable by order of any superior court in the state
20 of Washington for the county within which the proceeding may be
21 pending. The commission may hire staff as necessary, appoint
22 consultants, enter into contracts, and conduct studies as reasonably
23 necessary to carry out this chapter.

24 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
25 each repealed:

26 (1) RCW 47.64.180 (Agreements and awards limited by appropriation)
27 and 1983 c 15 s 9;

28 (2) RCW 47.64.190 (Marine employees' commission review for
29 compliance with fiscal limitations--Effective date of agreements and
30 arbitration orders) and 1983 c 15 s 10; and

31 (3) RCW 47.64.240 (Binding arbitration) and 1989 c 327 s 3 & 1983
32 c 15 s 15.

33 NEW SECTION. **Sec. 20.** Section 9 of this act expires July 1, 2006.

34 NEW SECTION. **Sec. 21.** Except for section 10 of this act which
35 takes effect July 1, 2006, this act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 immediately."

SHB 3178 - S COMM AMD

By Committee on Transportation

ADOPTED 03/02/2006

4 On page 1, line 1 of the title, after "employees;" strike the
5 remainder of the title and insert "amending RCW 47.64.011, 47.64.120,
6 47.64.130, 47.64.140, 47.64.170, 47.64.200, 47.64.210, 47.64.220,
7 47.64.220, 47.64.230, 47.64.270, and 47.64.280; adding new sections to
8 chapter 47.64 RCW; creating a new section; repealing RCW 47.64.180,
9 47.64.190, and 47.64.240; providing an effective date; providing an
10 expiration date; and declaring an emergency."

--- END ---